IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 135 of 1990

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SULTANABANU

Versus

SHAKIL AHMED A ANSARI

Appearance:

1. Criminal Revision Application No. 135 of 1990

MR KV SHELAT for Petitioner

MR EE SAIYED for Respondent No. 1

MR ST MEHTA APP for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 12/09/2000

ORAL JUDGEMENT

This revision under Section 397 read with Section 401 CrPC has been preferred by the divorced Muslim wife against the judgment and order dated 8th January, 1990

passed by the learned Metropolitan Magistrate, Court No. 2, Ahmedabad in Criminal Misc. Application No. 111 of 1987.

The petitioner was married to the respondent no. 1 in the year 1986 according to the Muslim shariyat. However, their marriage fell through and the respondent divorced the petitioner on 9th December, 1987. The petitioner preferred above referred Misc. Criminal Application No. 111 of 1987 under the Muslim Women [Protection of Rights on Divorce] Act, 1986 and prayed for payment of Rs. 2,575/= being the amount of Iddat. She also claimed recovery of dowry and other goods which according to her were given to her at the time of her marriage and the monthly maintenance of Rs. 750/=. The application was duly contested by the respondent husband. The learned Judge while considering the evidence on record observed that the respondent had avoided leading any evidence as regards his income. However, since he was a Sub-Editor in Indian Express, it was presumed that his salary was Rs. 1,500/= p.m. Accordingly, the learned Magistrate awarded a monthly maintenance of Rs. 500/= to the petitioner. As regards the other claim for recovery of jewellery and other things received by the petitioner on her marriage, the learned Judge has observed that after her estrangement with her husband, her father had gone to the house of the husband and had received some 10 items from the husband of the petitioner under writing Exh. 17. The learned Judge has concluded that had there been any other item to be recovered, a reference would have been made in the writing Exh. 17. The learned Judge, therefore, did not believe that anything belonging to the petitioner had been withheld by the respondent-husband. In view of the said finding, the learned Judge dismissed her application in respect to the recovery of items enlisted in list Exh. 9.

It is contended that the respondent being a Sub-Editor in the Indian Express was receiving salary atleast of Rs. 1500/= p.m. The respondent was also doing tailoring work for which he was earning Rs. 1000/= every month. The petitioner is, therefore, entitled to a monthly maintenance of Rs. 750/=. The petitioner has also challenged the award of the learned Magistrate in respect of the items enlisted in Exh. 9.

I see no substance in either of the contentions. The petitioner has stated that the respondent was earning a monthly salary of Rs. 1500/= from Indian Express which has been taken as a base for awarding the maintenance to the petitioner. However, the petitioner has not proved

that apart from his regular job with Indian Express, the respondent was also doing tailoring work and was earning from such tailoring work, as alleged. In absence of such evidence, the petitioner's claim for enhancement of maintenance cannot be countenanced. As regards the articles which the petitioner claims she is yet to recover from the respondent, no evidence has been led by the petitioner. The only evidence is that of his uncle which has not been believed by the learned Magistrate, as the witness was an interested person. Besides, the petitioner's father has received some ten articles under the writing Exh. 17. In absence of any specific proof, the learned Magistrate has rightly rejected the claim for recovery of the said articles.

No other claim is made by the petitioner. In view of the above discussion, the revision application is dismissed. Rule is discharged.

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Prakash*